



OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 841 and 842

RIN: 3206-AO42

Retirement: Members of Congress and Congressional Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is finalizing amendments to reflect the provisions enacted under the Middle Class Tax Relief and Job Creation Act of 2012 (“2012 Act”) and the Bipartisan Budget Act of 2013 (“2013 Act”). These Acts decreased the benefit accrual rate used in the annuity computation and increased employee deductions.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jane Bancroft, (202) 606-0299. Email: *Retirement.Policy@opm.gov*, with Public Law 112-96 and Attn: Jane Bancroft in the subject line.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 2022, OPM issued a proposed rule at 87 FR 68642 to implement the provisions of Public Law 110–279, 122 Stat. 2604 (2008) (codified at 2 U.S.C. 2051), as amended by Public Law 116–21, (2019). The 60-day public comment period ended on January 17, 2023. OPM received one comment- which was not responsive to the subject matter discussed in the rule. Therefore, this rule is being finalized with no changes for the November 16th proposed rule.

Because of the uncertain tenure of congressional service, the FERS was originally designed, as the Civil Service Retirement System had been, to provide a larger benefit for each

year of service to Members or congressional employees than to most other federal employees. Prior to the enactment of the 2012 Act, all Members or congressional employees became eligible for retirement annuities at an earlier age and with fewer years of service than most other federal employees. However, all Members or congressional employees paid a higher percentage of employee deductions for their retirement benefits than most other federal employees.

The 2012 Act made two significant changes to the retirement benefits of congressional employees and Members who are first covered by FERS after December 31, 2012. First, the 2012 Act decreased the FERS benefit accrual rates used in the FERS annuity calculation for congressional employees or Members first covered by FERS (or reelected with less than five years of FERS service) after December 31, 2012, to be the same as regular FERS employees. Therefore, the higher accrual rate applicable to Members or congressional employees is no longer available to those first covered by FERS after December 31, 2012.

Second, the 2012 Act increased the FERS employee contributions by 1.8 percentage points for Members first covered by FERS (or reelected with less than five years of FERS-covered service) after December 31, 2012. Therefore, Members newly covered by FERS beginning January 1, 2013, are required to contribute 3.1% of their basic pay to the Civil Service Retirement and Disability Fund. Enactment of the 2013 Act, further increased the FERS employee deductions by an additional 1.3 percentage points for all FERS-covered employees, including Members and congressional employees, first covered by FERS after December 31, 2013 (or rehired/reelected with less than five years of FERS-covered service). Subsequently, under the 2013 Act, Members and other federal employees first covered by FERS beginning in 2014 are required to contribute 4.4% of basic pay to FERS.

Beginning January 1, 2013, there is no longer a larger employee contribution under FERS required for Members and congressional employees in comparison with regular FERS employees; all of these groups contribute 3.1% of basic pay toward their FERS annuity if first covered after December 31, 2012, or 4.4% of basic pay if first covered by FERS after December

31, 2013. Members first elected after December 31, 2012, however, remain eligible for retirement annuities under FERS at earlier ages and with fewer years of service than regular federal employees.

Regulatory Impact Analysis

Executive Order 12866 and Executive Order 13563 direct-s agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). This rule is not a “significant regulatory action,” under Executive Order 12866 and was not reviewed by the Office of Management and Budget .

Regulatory Flexibility Act

The Office of Personnel Management certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 et seq.) requires rules (as defined in 5 U.S.C. 804) to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this action before its effective date, as required by 5 U.S.C. 801. This is not a “major rule” as defined by the Congressional Review Act (5 U.S.C. 804(2)).

Paperwork Reduction Act

This rule does not impose any reporting or record-keeping requirements subject to the Paperwork Reduction Act.

LIST OF SUBJECTS

5 CFR Part 841

Administrative practice and procedure, Air traffic controllers, Claims Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

5 CFR Part 842

Air traffic controllers, Alimony, Firefighters, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

For the reasons stated in the preamble, the Office of Personnel Management amends 5 CFR parts 841 and 842 to read as follows:

PART 841 – FEDERAL EMPLOYEES RETIREMENT SYSTEM - GENERAL

ADMINISTRATION

1. Revise the authority citation for part 841 to read as follows:

Authority: 5 U.S.C. 8461; Sec. 841.108 also issued under 5 U.S.C. 552a; Secs. 841.110 and 841.111 also issued under 5 U.S.C. 8470(a); subpart D also issued under 5 U.S.C. 8423; Sec. 841.504 also issued under 5 U.S.C. 8422; Sec. 841.507 also issued under section 505 of Pub. L. 99-335; subpart J also issued under 5 U.S.C. 8469; Sec. 841.506 also issued under 5 U.S.C. 7701(b)(2); Sec. 841.508 also issued under section 505 of Pub. L. 99-335; Sec. 841.604 also issued under Title II, Pub. L. 106-265, 114 Stat. 780; Sec. 5001 of Pub. L. 112-96 at 126 Stat. 199.

2. Amend § 841.103 by adding, in alphabetical order, the definitions of “FERS FRAE” and “FERS RAE” to read as follows:

§ 841.103 Definitions.

* * * * *

FERS FRAE, or a Further Revised Annuity Employee as identified under 5 U.S.C. 8422, is an employee or Member covered under FERS hired on or after January 1, 2014, unless the employee or Member—

(1) Was covered under FERS on December 31, 2012; or

(2) Performed civilian service creditable or potentially creditable under FERS on December 31, 2012;

(3) Or, if not covered under FERS on December 31, 2012, performed at least 5 years of civilian service creditable or potentially creditable under FERS prior to December 31, 2012; or

(4) Was covered under FERS RAE on December 31, 2013; or

(5) Was performing civilian service creditable or potentially creditable under FERS RAE on December 31, 2013; or

(6) If not covered under FERS RAE on December 31, 2013, performed at least 5 years of civilian service creditable or potentially creditable under FERS prior to December 31, 2013.

FERS RAE, or a Revised Annuity Employee as identified under 5 U.S.C. 8422, is an employee or Member covered under FERS hired on or after January 1, 2013, and before January 1, 2014, unless the employee or Member—

(1) Was covered under FERS on December 31, 2012; or

(2) Performed civilian service creditable or potentially creditable under FERS on December 31, 2012; or

(3) If not covered under FERS on December 31, 2012, performed at least 5 years of civilian service creditable or potentially creditable under FERS prior to December 31, 2012.

3. Revise § 841.503 to read as follows:

§ 841.503 Amounts of employee deductions.

(a) Except as provided in paragraph (b) of this section, the rate of employee deductions from basic pay for FERS coverage is seven percent of basic pay minus the percent of tax which is (or would be) in effect for the payment, for the employee cost of social security.

(b) The rate of employee deductions from basic pay for FERS coverage for a Member, law enforcement officer, firefighter, nuclear materials courier, customs and border protection officer, air traffic controller, member of the Supreme Court Police, Congressional employee, or employee under section 302 of the Central Intelligence Agency Act of 1964 for Certain Employees (who are not FERS RAE or FERS FRAE employees or Members, as defined under § 841.103 of this part), is seven and one-half percent of basic pay, minus the percent of tax which is (or would be) in effect for the payment, for the employee cost of social security.

(c) After December 31, 2012, the rate of employee deductions from basic pay for—

(1) A FERS RAE employee, Member, or Congressional employee is nine and three-tenths percent of basic pay, minus the percent of tax which is (or would be) in effect for the payment, for the employee cost of social security.

(2) A FERS RAE law enforcement officer, firefighter, nuclear materials courier, customs and border protection officer, air traffic controller, member of the Supreme Court Police, or employee under section 302 of the Central Intelligence Agency Act of 1964 for Certain Employees is nine and eight-tenths percent of basic pay, minus the percent of tax which is (or would be) in effect for the payment, for the employee cost of social security.

(d) After December 31, 2013, the rate of employee deductions from basic pay for—

(1) FERS FRAE employee, Member, or Congressional employee is ten and six-tenths percent basic pay, minus the percent of tax which is (or would be) in effect for the payment, for the employee cost of social security.

(2) A FERS FRAE law enforcement officer, firefighter, nuclear materials courier, customs and border protection officer, air traffic controller, member of the Supreme Court Police, or employee under section 302 of the Central Intelligence Agency Act of 1964 for Certain Employees is eleven and one-tenth percent of basic pay, minus the percent of tax which is (or would be) in effect for the payment, for the employee cost of social security.

(e) Employee deductions will be at the rate in paragraphs (a) through (d) of this section as if social security deductions were being made even if social security deductions have ceased because of the amount of earnings during the year, or are not made for any other reason.

PART 842 – FEDERAL EMPLOYEES RETIREMENT SYSTEM – BASIC ANNUITY

4. Revise the authority citation for part 842 to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under Secs. 3 and 7(c) of Pub. L. 105-274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under Sec. 102(e) of Pub. L. 104-8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104-134, 110 Stat. 1321-102; Sec. 842.107 also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105-33, 111 Stat. 251, and Sec. 7(b) of Pub. L. 105-274, 112 Stat. 2419; Sec. 842.108 also issued under Sec. 7(e) of Pub. L. 105-274, 112 Stat. 2419; Sec. 842.109 also issued under Sec. 1622(b)

of Pub. L. 104-106, 110 Stat. 515; Sec. 842.110 also issued under Sec. 111 of Pub. L. 99-500, 100 Stat. 1783, and Sec. 111 of Pub. L. 99-591, 100 Stat. 3341-348, and also Sec. 1 of Pub. L. 110-279, 122 Stat. 2602, as amended by Sec. 1(a) of Pub. L. 116-21, 133 Stat. 903; Sec. 842.208 also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110-161, 121 Stat. 2042; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and Sec. 1313(b)(5) of Pub. L. 107-296, 116 Stat. 2135; Secs. 842.304 and 842.305 also issued under Sec. 321(f) of Pub. L. 107-228, 116 Stat. 1383; Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under Sec. 7001(a)(4) of Pub. L. 101-508, 104 Stat. 1388; Sec. 842.707 also issued under Sec. 6001 of Pub. L. 100-203, 101 Stat. 1300; Sec. 842.708 also issued under Sec. 4005 of Pub. L. 101-239, 103 Stat. 2106, and Sec. 7001 of Pub. L. 101-508, 104 Stat. 1388; Subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under Sec. 636 of Appendix C to Pub. L. 106-554 at 114 Stat. 2763A-164; Sec. 842.811 also issued under Sec. 226(c)(2) of Pub. Law 108-176, 117 Stat. 2529; Subpart J also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110-161, 121 Stat. 2042; Pub. L. 115-352, 132 Stat. 5067 (5 U.S.C. 101); Sec. 5001 of Pub. L. 112-96 at 126 Stat. 199; 5 U.S.C. 8401; 5 U.S.C. 8415.

Subpart D--Computations

5. Revise § 842.406 to read as follows:

§ 842.406 Members of Congress and Congressional Employees.

(a) The annuity of a congressional employee or Member who is first covered by FERS on or before December 31, 2012, and who has had at least 5 years of service as a congressional employee, Member, or any combination thereof totaling 5 years is --

(1) One and seven-tenths percent of average pay multiplied by the total number of years of service as a Member and/or congressional employee not exceeding 20 years; plus

(2) One percent of average pay multiplied by the years of service other than that of a Member and/or congressional employee.

(b) Except as provided in paragraph (c) of this section, the annuity of a congressional employee or Member who is first covered by FERS after December 31, 2012, or Member re-elected with less than 5 years of FERS service after December 31, 2012, and who has had at least 5 years of service as a congressional employee, Member, or any combination thereof totaling 5 years is 1 percent of average pay multiplied by total service.

(c) The annuity of a congressional employee or Member is 1.1 percent of average pay multiplied by total service, provided the congressional employee or Member—

(1) Has completed 20 years of service; and

(2) Is at least age 62 at the time of separation on which entitlement to an annuity is based.